

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
UNITED STATES FOREST SERVICE
IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

Enoch Valley Mine
Henry Mine
Ballard Mine

P4 Production, L.L.C.
Respondent.

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) EPA Docket No.
) CERCLA-10-2003-0117
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CONSENT ORDER/ADMINISTRATIVE ORDER ON CONSENT
FOR THE PERFORMANCE OF SITE INVESTIGATIONS (SIs) AND ENGINEERING
EVALUATIONS/COST ANALYSIS (EE/CAs) AT P4 PRODUCTION, L.L.C.
PHOSPHATE MINE SITES IN SOUTHEASTERN IDAHO

8/20/03

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I. INTRODUCTION

1.1 This Consent Order ("CO")/Administrative Order on Consent ("AOC") is entered into voluntarily by the Idaho Department of Environmental Quality ("IDEQ"), the United States Environmental Protection Agency ("EPA"), the United States Department of Agriculture, Forest Service ("Forest Service") and P4 Production, L.L.C. ("P4"), the latter as Respondent (collectively, the "Parties" or alone a "Party"). The mine sites addressed in this CO/AOC are the Enoch Valley Mine, Henry Mine and Ballard Mine (collectively, the "Sites"), located partly on public land and/or private land that is subject to the jurisdiction, custody or control of IDEQ and EPA. A portion of the Enoch Valley Mine is subject to the jurisdiction, custody and control of the Forest Service. More detailed descriptions of the Sites are provided in Section IV of this CO/AOC ("Definitions").

1.2 As provided for in the July 17, 2000 Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho ("MOU"), attached as Appendix 1, the State of Idaho Department of Environmental Quality has been designated as the "Lead Agency" for these Sites and matters related to this CO/AOC. The EPA and the Forest Service shall participate at the Sites as Support Agencies along with the United States Department of Interior's Fish and Wildlife Service ("FWS"), Bureau of Land Management ("BLM") and Bureau of Indian Affairs ("BIA"), and the Shoshone-Bannock Tribes ("Tribes").

1.3 This CO/AOC provides for the performance by P4 of Site Investigations ("SIs") and Engineering Evaluation/Cost Analysis ("EE/CAs") for the Enoch Valley Mine, Henry Mine and Ballard Mine (the Sites). More detailed descriptions of the Sites are provided in Section IV of this CO/AOC ("Definitions"). The work required for performance of SI's and EE/CAs is specified in the Statement of Work ("SOW") attached, and incorporated by reference, as Appendix 1 to this CO/AOC, and is governed by Section IX of this CO/AOC ("Work to be Performed"). Data relevant to the SIs may be available and will continue to be generated from work undertaken by P4 in anticipation of performing the work required under this CO/AOC ("Work") and generated as part of the Area-Wide Investigation contemplated by the MOU and the Area Wide Investigation CO/AOC (July 20, 2001) ("AWAOC"), attached as Appendix 3, as well as from other sources.

This CO/AOC is intended to be implemented consistently with the MOU and AWAOC.

II. JURISDICTION

2.1 This CO/AOC is entered into by IDEQ pursuant to Idaho's Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130, the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-4401 to 39-4432 and Idaho's Water Quality Act, Idaho Code § 39-3601 *et seq.*, *the Rules and Standards promulgated pursuant thereto, and as a delegated Lead Agency pursuant to the MOU*. This CO/AOC is entered into by EPA and the Forest Service under the authority vested in the President of the United States by Sections 104, 122(a), and 122(d)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9622(a), and 9622(d)(3).

2.2 Without admitting any liability, P4 agrees to the terms and conditions of this CO/AOC without the issuance of a Notice of Violation or the holding of a compliance conference under applicable Idaho law.

2.3 In any action to enforce the terms of this CO/AOC, the Parties agree not to contest its validity or the authority and jurisdiction of IDEQ, the Forest Service or EPA to issue and enforce this CO/AOC, except that P4 reserves the right to contest the authority of EPA to enforce this CO/AOC beyond the limitations provided in Section XXVII, and the Parties agree to comply with and be bound by the terms and conditions of this CO/AOC. By signing this CO/AOC, however, P4 does not concede or waive its right to object to the authority of the United States or IDEQ to issue, take, or enforce any other order or action relating to this Site.

III. PARTIES BOUND

3.1 This CO/AOC shall apply to, and be binding upon IDEQ, EPA, the Forest Service and P4 and its officers, employees, agents, successors and assigns. Any change in ownership or corporate status of P4 including, but not limited to, any transfer of assets or real or personal property shall not alter P4's obligation to comply with the requirements of this CO/AOC or to ensure compliance by any successor or assign of P4, regardless of whether P4 continues to exist following such transaction. The signatories to the CO/AOC certify that they are authorized to

execute and legally bind the Parties they represent to this CO/AOC. P4 shall provide a copy of this CO/AOC and all of its Appendices to the Support Agencies, as defined herein.

3.2 P4 shall provide a copy of this CO/AOC and all of its Appendices to each contractor, subcontractor, laboratory, and consultant retained to perform Work under the CO/AOC within fourteen (14) days after the effective date of this CO/AOC or the date of retaining their services, whichever is later, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this CO/AOC and its Appendices. Notwithstanding the provisions of any such contract, however, P4 is, and shall remain, responsible for compliance with this CO/AOC.

IV. DEFINITIONS

4.1 Unless otherwise expressly provided herein, terms used in this CO/AOC that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this CO/AOC or in the attached Appendices, the following definitions shall apply:

“CO/AOC” shall mean this Consent Order/Administrative Order on Consent and all attached Appendices. In the event of a conflict between this CO/AOC and any Appendix, this CO/AOC shall control.

“BLM” shall mean the United States Department of the Interior, Bureau of Land Management.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than Saturday, Sunday, or a Federal holiday. In computing any period of time under this CO/AOC, where the last day falls on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Deliverable” shall mean the documents identified in paragraph 9.6 that P4 must submit pursuant to this CO/AOC, and any additional documents identified in writing by IDEQ under Section XXI of this CO/AOC. All Deliverables under this CO/AOC are subject to review,

comment, and approval as described in Paragraph 9.7 of this CO/AOC.

“DOI” shall mean the United States Department of the Interior.

“Effective date of this CO/AOC” shall mean the date on which the CO/AOC has been signed by all Parties and concurred in by the United States Department of Justice.

“EPA” shall mean the United States Environmental Protection Agency.

“EPHA” shall mean the Idaho Environmental Protection & Health Act, Idaho Code §§ 39-101 to 39-130.

“Forest Service” shall mean the United States Department of Agriculture, Forest Service.

“FWS” shall mean the United States Department of the Interior, Fish and Wildlife Service.

“Hazardous substances” shall include those substances defined under Idaho Code § 39-7203(3) and CERCLA § 101(14), 42 U.S.C. § 9601(14) and shall also include “pollutants” as defined by Idaho Code § 39-3602(19) and IDAPA 58.01.02.003.82, “deleterious materials” as defined by IDAPA 58.01.02.003.20 and “hazardous material” as defined by IDAPA 58.01.02.003.46.

“HWMA” shall mean the Hazardous Waste Management Act of Idaho, Idaho Code §§ 39-4401 to 39-4432.

“Idaho’s Water Quality Act” shall mean Idaho Code §§ 39-3601 *et seq.*

“IDEQ” shall mean the State of Idaho Department of Environmental Quality.

“Lead Agency” shall mean the State of Idaho through IDEQ.

“MOU” shall mean the July 2000 “Memorandum of Understanding Concerning Contamination from Phosphate Mining Operations in Southeastern Idaho” between several federal agencies (Forest Service, EPA, BLM, BIA and FWS), IDEQ and the Shoshone-Bannock Tribes.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, and amendments thereto.

“Natural Resource Damages” or “NRD” shall mean damages for harm to federal, state or tribal natural resources which the United States, the State and/or the Tribes has the authority to

seek pursuant to common law, state statutory law, or federal statutory law, including CERCLA and the Clean Water Act, 33 U.S.C. § 1251 et seq.

“Sites” shall mean the Enoch Valley, Henry and Ballard Phosphate Mines approximately 20 miles northeast of Soda Springs, Idaho, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for response action implementation and materials handling. The Sites occur primarily on State and private lands although the Enoch Valley Mine is partially located on National Forest System land in the Caribou/Targhee National Forest leased to P4 by the United States and the southern tip of the Henry Mine is located on BLM-administered lands. The Sites are further described on the maps attached to this CO/AOC as Appendix 4, which is incorporated by reference into this CO/AOC. Because certain aspects of the Work may proceed separately at each of the three mines, the term “Sites” shall refer to a single mine site, where appropriate. “Site” shall mean one of the Sites.

“State” shall mean the State of Idaho, including its departments, agencies and instrumentalities.

“Statement of Work” or “SOW” shall mean the documents that outline the Work to be performed by P4 to implement these site investigations and to satisfy the requirements of this CO/AOC, as set forth in Appendix 1 of this CO/AOC, and any modifications made thereto in accordance with Section XXI of this CO/AOC.

“Support Agency” means an agency that provides a support agency coordinator or project manager to furnish necessary data to IDEQ, review response data and documents, and/or provide other assistance as requested by the On-Scene Coordinator. The Forest Service has declined Support Agency status for Henry and Ballard Mines but will retain Support Agency status for Enoch Valley. All other federal agencies (EPA, FWS, BLM, BIA) and the Tribes have retained Support Agency status for all three Sites.

“Tribes” shall mean the Shoshone-Bannock Indian Tribes residing on the Fort Hall reservation near Pocatello, Idaho.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

“USDA” shall mean the United States Department of Agriculture.

“Work” shall mean all tasks that P4 is required to perform pursuant to this CO/AOC, and its attached Appendices, and all Deliverables produced pursuant to this CO/AOC.

V. FINDINGS OF FACT

5.1 The Sites are located in Caribou County, Idaho on State and private lands, although the Enoch Valley Mine is located partially on National Forest System land. IDEQ exercises jurisdictional control over environmental issues in the State of Idaho and on State- and privately-owned lands; the Forest Service exercises jurisdiction, custody and control over National Forest System lands on behalf of the United States and BLM exercises jurisdiction, custody and control over Federally-owned public lands. On public lands, the BLM is responsible for the issuance and administration of leases for mineral extraction on behalf of the United States and the Idaho Department of Lands is responsible for State mineral leases.

5.2 Ballard Mine is located in Township 7 South, Range 42-43 East approximately 12 miles north of Soda Springs. Monsanto began production at the Ballard Mine in 1951 under Lease BL-055875 initially issued to J.R. Simplot in December 1948 and reassigned to Monsanto in May 1951. The West Ballard Lease, I-05723, was issued to Monsanto in July 1955. Mining continued under both leases until 1969. The applicable Federal leases were relinquished to the BLM in July 1984. The Ballard Mine Site was used for experimental plantings and reclamation research dating back to approximately 1958.

5.3 Henry Mine is located in Township 6 South, Range 42-43 East, approximately 4 miles southeast of Henry, Idaho. Monsanto began initial production at Henry Mine in Pits I & II in 1969 under BLM leases I-011451 issued in September 1960, and I-013814 issued in December 1965. The South Henry Continuation (Pit III) was mined from 1976-1980, Center Henry Continuation (Pit IV) from 1981-1985, and the North Henry Continuation (Pit V) from 1986-1989. The applicable Federal leases were relinquished to BLM in December 1993.

5.4 Enoch Valley Mine is located in Township 6 South Range 43 East approximately 19 miles northeast of Soda Springs. Mining began in 1989 and is conducted under two State leases and three Federal leases. BLM Lease I-011683 was initially issued to the Ruby Company (later Simplot) in May 1963 and was reassigned to Monsanto in June 1990. BLM Leases I-015033 and I-015122 were issued to FMC Corporation in September 1968 and 1964, respectively, and were both reassigned to Monsanto in April 1981. State Leases E-07957 and E-08379 were issued to Monsanto in May 1978 and April 1981, respectively. All assigned leases were reassigned to P4 Production, L.L.C. in September 1997, and mining activities are still occurring at the Enoch Valley Site.

5.5 Historic mining activities at all three Sites have included the construction of waste rock and overburden piles comprised of middle waste shales which include selenium, as well as metals that are designated as hazardous substances, pollutants or deleterious materials. Sampling results from the Area Wide Investigations performed since 1996 indicate elevated levels of these constituents in waste rock soils, vegetation, surface water units and other various abiotic/biotic media at the Sites.

5.6 Pursuant to the July 2000 MOU between the federal agencies, IDEQ and the Shoshone-Bannock Tribes, and the subsequent Forest Service letter to P4 of 12/20/01 regarding Enoch Valley Mine, IDEQ is the lead agency for conducting response actions at the Sites.

5.7 Selenium and other hazardous substances have been detected above background concentrations in monitoring and sampling conducted at the Sites by P4. Subsequent sampling conducted by the Forest Service, BLM, their contractors, and the University of Idaho indicate that selenium and other hazardous substances are being leached from waste rock at the Sites into the environment, and may be impacting vegetation and surface water.

5.8 As stated in the AWAOC, the Parties intend that Work accomplished in accordance with this site-specific CO/AOC will be closely coordinated with the Area-Wide investigation and shall not be performed in a duplicative or inconsistent manner.

5.9 Subject to paragraph 6.1, and based on the Findings of Fact set forth above in paragraphs 5.1-5.7, and the Administrative Record supporting this removal action, IDEQ, Forest

Service and EPA make the determinations in paragraphs 5.10.1 through 5.10.9.

5.10.1 The Sites are each a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

5.10.2 The contaminants found at the Sites, including selenium and other hazardous substances, are “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and are “hazardous and deleterious materials” subject to the provisions of IDAPA 58.01.02.800, or are otherwise “pollutants” as defined by IDAPA 58.01.02.003.78.

5.10.3 There has been actual or threatened “release,” as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of one or more hazardous substances from the facility.

5.10.4 There has been an actual discharge, as defined in IDAPA 58.01.02.003.25, of one or more pollutants or hazardous or deleterious materials from the facility to waters of the State of Idaho.

5.10.5 P4 is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21) and IDAPA 58.01.02.003.74.

5.10.6 P4 is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a past and/or current owner and/or operator of the Sites and/or as a person who arranged for the disposal of hazardous substances at the Sites.

5.10.7 P4 is liable to the State of Idaho under IDAPA 58.01.02.080.01.a-b. as a result of discharge to waters of the State of pollution and/or hazardous and deleterious materials.

5.10.8 The actual or threatened release of pollutants, hazardous substances and/or deleterious materials from the Sites may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a) or will otherwise injure designated beneficial uses of waters of the State within the meaning of IDAPA 58.01.02.080.01.b.

5.10.9 The Work to be performed under this CO/AOC is necessary to protect public health, welfare or the environment, will be consistent with CERCLA, the NCP, EPHA, HWMA, and Idaho’s Water Quality Act, and will expedite effective response actions, and is in the

public interest.

VI. COLLATERAL USE OF THIS CO/AOC

6.1 Except as set forth in paragraph 2.3, nothing in this CO/AOC shall constitute or be construed as an admission of liability or fact by any of the Parties. Specifically, P4 neither admits nor denies the findings of fact, conclusions of law, or determinations set forth in this CO/AOC, and does not admit any responsibility or liability for any releases or threatened releases of pollutants, hazardous substances, and/or hazardous and deleterious materials from the Sites. Moreover, P4 does not acknowledge or concede that any release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. IDEQ, EPA, and the Forest Service do not admit any liability arising out of or relating to the Sites or otherwise waive any provisions of the MOU relating to liability or jurisdiction.

6.2 None of the provisions of this CO/AOC shall be admissible in evidence in any proceeding, other than in a proceeding to enforce this CO/AOC or any judgment related to it, or for the purpose of demonstrating the consistency of the actions taken under this CO/AOC with the NCP, CERCLA, the EPHA the HWMA, or Idaho's Water Quality Act.

VII. ORDER

7.1 Based upon the foregoing provisions of this CO/AOC, and the Administrative Record for the Sites, it is hereby ordered and agreed that P4 shall comply with the provisions of this CO/AOC, including but not limited to all Appendices to this CO/AOC and documents incorporated by reference into this CO/AOC, and perform the actions required in this CO/AOC.

VIII. ON-SCENE COORDINATOR/PROJECT COORDINATOR

8.1 IDEQ has been designated the Lead Agency for the Sites pursuant to the MOU. IDEQ, as the Lead Agency for the Sites, will coordinate with USFS, USFWS, BLM, BIA, the Tribes and EPA as Support Agencies pursuant to the MOU except to the extent a governmental party has declined Support Agency status as to a particular Site. IDEQ will appoint an On-Scene Coordinator ("OSC"). The initial OSC for the Sites is:

Richard Clegg
 Department of Environmental Quality
 15 West Center
 Soda Springs, Idaho 83276
 Phone: (208) 547-1940
 FAX: (208) 547-3989
 E-Mail: rclegg@deq.state.id.us

P4 has designated as the Project Coordinator for the Site:

Robert L. Geddes
 P4 Production, L.L.C.
 PO Box 816
 Soda Springs, Idaho 83276
 Phone: (208) 547-1234
 Fax: (208) 547-3312
 E-mail: robert.l.geddes@monsanto.com

8.2 The OSC and the Project Coordinator shall be responsible for overseeing implementation of the Work and/or activities required at the Sites under this CO/AOC. All written communications between the Parties concerning implementation of this CO/AOC shall be directed to the OSC or Project Coordinator, by regular or overnight mail or by facsimile, with copies to such other persons as the Parties reasonably designate. IDEQ and/or P4 may change their respective OSC/Project Coordinator and shall notify each other in writing at least five (5) days prior to any such change.

8.3 As specifically described elsewhere in this CO/AOC, deliverables and other written communications transmitted by one of the Parties under this CO/AOC shall be sent to the following persons:

For the IDEQ: the OSC designated in paragraph 8.1.

For the Forest Service: (Enoch Valley Mine Site Only)

Jeff Jones
 U.S. Forest Service
 421 West 2nd South
 Soda Springs, Idaho 83276
 Phone: (208) 547-4356
 Fax: (208) 547-1112
 E-mail: jjones13@fs.fed.us

For the BLM:

Bill Stout

Bureau of Land Management
 1111 North 8th Avenue
 Pocatello, Idaho 83201
 Phone: (208) 478-6367
 Fax: (208) 478-6376
 e-mail: Bill_Stout@blm.gov

For FWS:

Susan Burch, Contaminants Specialist
 USFWS - Idaho Snake River Basin Office
 1387 S. Vinnell Way
 Room 368
 Boise, Idaho 83709
 Phone: (208) 378-5243
 Fax: (208) 378-5262
 E-mail: susan_burch@fws.gov

For EPA:

Dave Tomten
 1435 N. Orchard St.
 Boise, Idaho 83706
 Phone: (208) 378-5763
 Fax: (208) 378-5744
 E-mail: tomten.dave@epa.gov

For the BIA:

Dean Fox
 BIA-Fort Hall Agency
 Admin. Bldg. 606 Bannock Ave., Rm. 210
 Fort Hall, Idaho 83203
 Phone: (208) 238-2312
 Fax: (208) 238-1310
 E-mail: deanfox@bia.gov

For the Tribes:

Christina Cutler
 Shoshone-Bannock Tribes
 PO Box 306
 Fort Hall, Idaho 83203
 Phone: (208) 238-5372
 Fax: (208) 237-0797
 e-mail: ccutler@shoshonebannocktribes.com

For P4: the Project Coordinator designated in paragraph 8.1.

8.4 The OSC shall have the authority vested in the OSC by the EPHA, the HWMA, and other applicable law. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

IX. WORK TO BE PERFORMED

9.1 P4 agrees to perform a Site Investigation ("SI") and an Engineering Evaluation and Cost Analysis ("EE/CA") at each mine Site, consistent with the attached Site Specific SOWs. The Parties agree to use their best efforts to coordinate activities under this CO/AOC with existing and future mining operations to minimize interference between CO/AOC activities and mining activities recognizing that portions of the Sites remain active operating facilities subject to regulatory programs. Investigation and related activities have already been performed that may be relevant to P4 in completing the Work under the SOW, including but not limited to those activities performed in connection with the AWAOC and other activities performed by P4 and various other public and private entities. In 2002 P4 initiated mine specific surface water and sediment investigation work at the request of IDEQ with the agency's assurance that said work could be credited toward the Work required under this CO. IDEQ may, in its discretion, accept work previously performed by P4 in satisfaction of one or more SOW requirements. The SOW shall describe the remaining Work required to complete the SIs.

9.1.1 The general objective of the SI is to determine the scope of any release or threatened release of hazardous substances to the environment at or from each individual Mine Site. Each SI shall consist of sampling and monitoring, including the preparation of reports, as set forth in the SOW.

9.1.2 The general objective of the EE/CA for each Site is to identify and evaluate removal action requirements and alternatives designed to prevent, mitigate, or otherwise respond to or remedy any release or threatened release of hazardous substances from the individual Sites in accordance with the NCP, 40 C.F.R. § 300.415, and applicable state law. P4 shall perform the EE/CA in accordance with the SOW for each Site (Appendix 1). The EE/CAs shall include, but are not limited to, the following:

9.1.2.1 An identification of removal action objectives, as more specifically set forth in the SOW and the relevant and appropriate portions of EPA's Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA, Office of Solid Waste and Emergency Response ("OSWER") Directive No. 9360.0-32, August 1993;

9.1.2.2 An identification and comparative analysis of removal action alternatives, including an analysis of their effectiveness, cost, and ability to be implemented, as more specifically set forth in the SOW and the relevant and appropriate portions of OSWER Directive No. 9360.0-32; and

9.1.2.3 A recommended action alternative identified by IDEQ.

9.2 All Work to be performed under this CO/AOC shall be under the direction and supervision of qualified personnel of P4 or its consultants with experience in CERCLA investigations and response actions. P4 shall notify IDEQ of its qualifications or the name and qualifications of any contractors or subcontractors retained to perform the Work under this CO/AOC at least fifteen (15) days prior to commencement of the portion of the Work proposed to be performed by such contractor or subcontractor and IDEQ retains the right to disapprove of any, or all, such contractors and/or subcontractors retained by P4, or of P4's choice of itself to do the Work. If IDEQ disapproves a selected contractor or P4's choice of itself, P4 shall retain a different contractor or notify IDEQ that P4 will perform the Work in place of the disapproved contractor, within thirty (30) days following IDEQ's disapproval. P4 shall notify IDEQ of that contractor's name and the qualifications of the contractor or P4 within that same time.

9.3 All samples analyzed shall be analyzed by a laboratory that participates in a Quality Assurance/Quality Control program equivalent to that specified in the guidance documents listed in the SOW.

9.4 All Work under this CO/AOC shall be conducted in accordance with CERCLA, the NCP, EPHA, HWMA, Idaho's Water Quality Act, and applicable guidance documents. The OSC will provide P4 with copies of the relevant guidance documents upon request. All Work performed by and for P4 in compliance with the requirements of this CO/AOC, its Appendices, or the Deliverables specified in paragraph 9.6, infra, and approved by IDEQ, shall be deemed to be necessary and consistent with the EPHA, HWMA and Idaho's Water Quality Act, and to the extent concurred in by the appropriate Support Agency, shall also be deemed consistent with the NCP.

9.5 During performance of the Work required under this CO/AOC, P4 shall provide

IDEQ with data and Deliverables as described below and/or in the SOW. A schedule for submittal of the Deliverables is contained in the attached SOW. Upon the written request of the OSC, P4 shall provide IDEQ with non-validated analytical data within thirty (30) days of receiving such data.

9.6 The documents required under this CO/AOC to be prepared, submitted for approval, and implemented by P4 shall be known as "Deliverables." For the purposes of this CO/AOC, Deliverables shall include the SI/EE/CA Work Plans, the Sampling and Analysis Plans ("SAP"s), the Draft SI Reports, the Final SI Reports, the Draft EE/CA Reports, and the Final EE/CA Reports for each individual Site. These Deliverables are described more fully below:

9.6.1 SI/EE/CA Work Plan. P4 shall submit and implement a complete SI/EE/CA Work Plan that satisfies the SOW.

9.6.2 Sampling and Analysis Plans ("SAP"s). P4 shall submit and implement a SAP for each Site that includes a site health and safety plan ("HASP"), quality assurance project plan ("QAPP") and field sampling plan ("FSP") covering all Work under this CO/AOC. These plans shall be consistent with the NCP, any applicable state regulations, and any applicable EPA guidance including EPA's current Standard Operating Safety Guides (EPA Publication 9285:1-03, PB92-963414, June 1992). In addition, the HASPs shall comply with all applicable occupational safety and health regulations. Also, the FSP and QAPP for each Site will include procedures for collecting, transporting and analyzing all samples collected at the Site, as well as procedures for quality assurance/quality control ("QA/QC"). These procedures shall be consistent with 40 C.F.R. § 300.415(b)(4)(ii) and EPA Requirements for Quality Assurance Project Plans, EPA QA/G 5. The SAP shall identify laboratories to be used during performance of the Work of this CO/AOC.

9.6.3 SI Report. P4 shall submit an SI Report for each Site that describes the implementation and results of the sampling and analysis required in the SI Work Plan, including modifications approved by IDEQ, if any, made during the implementation. The final report shall include: documentation of the conditions encountered during well installation; development logs; a description of the sampling procedures completed; a presentation of the analytical results of all

sampling and analyses performed; and appendices containing all relevant documentation generated during the monitoring, including, without limitation, manifests, chain of custody, sampling data sheets, laboratory results, permits, and pertinent portions of the work performed pursuant to the AWAOC, which may be incorporated by reference into the SI Report.

9.6.4 EE/CA Report. P4 shall submit a report for each Site documenting implementation of the EE/CA Work Plan, including modifications approved by IDEQ, as provided herein, if any, during the implementation. The final report shall contain a detailed analysis of removal alternatives, a recommendation for the selection by IDEQ of a removal alternative, and a detailed justification for the recommendation, as described in paragraph 9.1.2 of this section, the SOW and the EE/CA Work Plan.

9.7 All Deliverables shall be submitted initially by P4 in draft form, in accordance with the schedule provided in the SOW, or as otherwise established by IDEQ OSC, and are subject to review, comment, and written approval or disapproval by IDEQ. IDEQ agrees to consolidate any comments received from Support Agencies and to provide a single set of comments to P4. Within thirty (30) days of P4's receipt of the comment from IDEQ on each draft document, P4 shall amend and submit a revised document to IDEQ that incorporates all comments and corrects all deficiencies identified by IDEQ, unless such comments have been revised or withdrawn in writing. Except as provided in the final sentence of this paragraph, deliverables approved by IDEQ shall be incorporated herein, shall be enforceable as a part of this CO/AOC, and may be modified only upon the written approval of IDEQ. IDEQ may also approve a Deliverable with modifications; once approved, and except as provided in the final sentence of this Paragraph, the Deliverable shall be incorporated herein, shall be enforceable as part of this CO/AOC, and may be modified only upon written approval of IDEQ. In the event P4 disagrees with any IDEQ decision made under this Paragraph, such disagreement shall be resolved under the dispute resolution provisions of this CO/AOC. Upon completion of the dispute resolution process under this CO/AOC, the Deliverable as modified and approved through the dispute resolution process shall be incorporated herein and shall be enforceable as part of this CO/AOC.

9.8 The Deliverables shall be submitted to IDEQ in accordance with the schedule

set forth in the SOW.

9.9 The absence of written comments by IDEQ in response to the submission of any Deliverable by P4 pursuant to the schedules set out under this SOW shall not be construed as IDEQ's approval of the Deliverable under this CO/AOC.

9.10 P4 shall not implement the actions described in a Deliverable in connection with any Work at the Site until it receives written approval of the Deliverable from IDEQ. Each Deliverable approved in writing by IDEQ shall be incorporated by reference into this CO/AOC. All Work performed pursuant to this CO/AOC shall be in accordance with approved Deliverables, unless otherwise authorized in writing by the OSC. Failure to materially comply with any provision of an approved Deliverable shall be considered a violation of this CO/AOC.

9.11 Unless the OSC authorizes a smaller number in writing, P4 shall provide to IDEQ an electronic copy and three (3) paper copies of each draft and final Deliverable, including one unbound copy and shall provide one copy to each Support Agency. Such copies shall be sent to the contacts listed in paragraph 8.3 of this CO/AOC. All reports, maps and supporting information shall be provided in readily reproducible form.

9.12 IDEQ will prepare a Community Relations Plan for the P4 Sites in accordance with applicable EPA guidance and the NCP. P4 shall provide information and otherwise cooperate in support of the preparation and implementation of the Community Relations Plan.

9.13 Upon request by IDEQ or a Support Agency, through the OSC, P4 shall provide copies of plans, task memoranda, field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other documents generated in connection with the Work performed under this CO/AOC; provided, however, that P4 need not disclose such materials if protected from disclosure by a claim of attorney-client privilege or attorney work product, to the extent such protections are not limited by paragraphs 18.3 and 18.4 of this CO/AOC. To the extent P4 contends information proposed for disclosure pursuant to this paragraph is subject to a claim of business confidentiality or trade secret, P4 shall make such claim upon the face of the document. Disclosure of such information to IDEQ shall be governed by the provisions of paragraphs 18.3-4 and the Idaho Public Records

Act, Idaho Code § 9-342.

X. ADMINISTRATIVE RECORD

10.1 IDEQ shall determine the initial contents and location of the administrative record for the Sites and shall provide reasonable notice to P4 of these contents and this location. P4 may submit to IDEQ for consideration for inclusion in the record any records, reports, data, documents, photographs, or other information or materials prepared, discovered, relied on, or otherwise generated or used in connection with P4's performance of Work under this CO/AOC. However, nothing in this paragraph shall be deemed to limit or affect the lawful discretion of IDEQ to determine the contents of the administrative record; provided, however, that if IDEQ refuses to include materials submitted by P4 in the administrative record, such refusal shall be subject to the dispute resolution provisions of this CO/AOC.

10.2 IDEQ retains the responsibility for releasing to the public the one or more EE/CA Reports and any decision documents for the Sites. IDEQ will, after providing opportunity for public comment on any EE/CA Report, consistent with 40 C.F.R. §§ 300.415 and 300.820, select a removal alternative that is appropriate for each Site. The selection of a removal action is governed by State authority and to the extent concurred in by the appropriate federal Support Agency is also governed by Section 113(h) and (j) of CERCLA and shall not be subject to the dispute resolution procedures of this CO/AOC. Nothing in this CO/AOC shall be deemed to obligate P4 to perform or take any action pertaining to the selected removal action.

10.3 Unless instructed otherwise by the OSC, in writing, P4 shall submit to IDEQ upon submission of an EE/CA Report for each Site, any documents developed during the course of the EE/CA; provided, however, that P4 need not disclose such materials if protected from disclosure by a claim of attorney-client privilege or attorney work product, to the extent such protections are not limited under paragraphs 18.3 or 18.4. To the extent P4 contends information proposed for disclosure pursuant to this paragraph is subject to a claim of business confidentiality or trade secret, P4 shall make such claim upon the face of the document. Disclosure of such information shall be governed by the provisions of paragraphs 18.3-4 and, with respect to disclosure of information to IDEQ, the Idaho Public Records Act, Idaho Code § 9-342. Documents developed

during the performance of the EE/CA include, but are not limited to, copies of plans, task memoranda, documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports required pursuant to this CO/AOC. P4 also shall submit any correspondence between P4 and state, local, or other federal authorities concerning the performance of the EE/CA or the selection of the removal action for each Site.

XI. OTHER APPLICABLE LAWS

11.1 All actions required to be taken pursuant to this CO/AOC shall be performed in accordance with the requirements of all applicable local, state, and federal laws and regulations, except that, pursuant to Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no Federal, State, or local permit shall be required for the portion of the Work conducted entirely on-site, where such Work is carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621(e), and the NCP. Where any portion of the Work performed off-site requires a federal or state permit or approval, P4 shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

11.2 Compliance by P4 with the terms of this CO/AOC shall not relieve P4 of its obligation to comply with CERCLA, RCRA, EPHA, HWMA, or any other applicable local, state, or federal laws and regulations.

XII. RECORD PRESERVATION

12.1 The original or one copy of all records and documents in the possession, custody or control of P4, excluding internal drafts of Deliverables, that are generated or collected pursuant to this CO/AOC shall be preserved during performance of the Work and for a minimum of ten (10) years after completion of the Work required under this CO/AOC, unless IDEQ with the concurrence of the Support Agencies notifies P4 in writing that these documents may be destroyed earlier. After the expiration of this ten-year period, P4 shall notify IDEQ and all Support Agencies at least sixty (60) days before the documents are scheduled to be destroyed and shall provide IDEQ with the opportunity to take possession of or copy non-privileged material. Such

notice is only required for five years following expiration of the ten-year post-completion period, unless extended by request of IDEQ, in writing.

XIII. CLAIMS AGAINST THIRD PARTIES

13.1 The Parties to this CO/AOC reserve any claims they now have, or may have in the future, against any third party including, but not limited to, claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for recovery of response costs, including oversight or enforcement costs arising out of, or related to, this CO/AOC, and any future and/or past costs incurred in connection with the Site or this CO/AOC. Nothing in this CO/AOC shall constitute or be construed as a release from any claim, cause of action or demand against any person, firm, partnership, or corporation not a signatory to this CO/AOC for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances found at, taken to, or taken from the Site, or from the ownership or operation of the Site or any portion thereof.

XIV. MODIFICATION OF CO/AOC PLANS OR SCHEDULES

14.1 The terms of this CO/AOC may be modified only by the written agreement of the Parties; provided, modifications to any plan or schedule may be made, in writing, by the OSC or at the OSC's direction, as provided in paragraph 32.1.

XV. THREATENED/ENDANGERED SPECIES

15.1 P4 shall immediately notify the OSC of any and all threatened or endangered species encountered on the Site in the course of performing activities under this CO/AOC.

XVI. COUNTERPARTS AND EFFECTIVE DATE

16.1 This CO/AOC may be executed in counterparts, each of which shall be deemed to be an original, but such counterparts shall together constitute a single, integrated document. This CO/AOC shall be effective on the date it has been signed by all Parties and approved by the United States Attorney General or his or her designee.

XVII. ACCESS

17.1 Beginning on the effective date of this CO/AOC, the Forest Service shall permit access to the portions of the Sites located on National Forest System land to P4 and its authorized representatives, as necessary to perform the Work required under this CO/AOC. P4 shall provide access for IDEQ and Support Agency personnel accompanied or authorized by the OSC to the Sites and to off-Site areas under the ownership and/or control of P4 as may be needed to implement this CO/AOC, and shall provide access to all records and documentation related to the conditions at the Sites and the actions conducted pursuant to this CO/AOC; provided, however, that P4 need not disclose such materials if protected from disclosure by a claim of attorney-client privilege or attorney work product, to the extent such protections are not limited under paragraphs 18.3 or 18.4. To the extent P4 contends information disclosed pursuant to this paragraph is subject to a claim of business confidentiality or trade secret, P4 shall make such claim upon the face of the document. Disclosure of such information to IDEQ shall be governed by the provisions of paragraphs 18.3-4 and the Idaho Public Records Act, Idaho Code § 9-342.

17.2 P4 shall use its best efforts to obtain such access as may be needed, if any, to private lands not under its ownership and/or control that are necessary to perform the Work required under this CO/AOC. P4 will use its best efforts to have any access agreement that it obtains include such access by IDEQ as may be necessary for IDEQ and their authorized representatives, and for Support Agency personnel accompanied or authorized by the OSC, to implement the terms of this CO/AOC, and shall specify that P4 is not the representative of IDEQ for purposes of liability associated with Site activities. P4 shall provide IDEQ with copies of all relevant access agreements prior to initiation of field activities on the area covered by the access agreement. To the extent that P4 is unable to obtain consensual access to any private lands, IDEQ may exercise its authorities to obtain access. All persons, including but not limited to IDEQ and the Support Agencies, with access to a Site under this paragraph shall be required to comply with the approved health and safety plans of that Site as well as any other health and safety requirements of the Mine Safety and Health Act, 30 U.S.C.A. Ch. 22, applicable to the Site. For

purposes of this paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of an access agreement, access easement, land/water use restriction, restrictive easement, and/or an agreement to release or subordinate a prior lien or encumbrance, but shall not include the purchase of real property to the extent the reasonable price for such property exceeds the fair market value for such real property as determined by an independent appraisal.

XVIII. SAMPLING AND DATA AVAILABILITY

18.1 P4 shall notify IDEQ at least five (5) working days prior to conducting field events, including construction, excavation, drilling and sampling events. The five-day notice period may be shortened if IDEQ and P4 agree that this notice period would impede or prevent necessary or desirable sampling. Any Party, including its contractors, that is taking samples, will, at the request of another Party, allow split or duplicate samples to be taken by or for the other Party of any samples collected in the course of implementing this CO/AOC.

18.2 Except for objections made in state court based upon Idaho Rules of Evidence 401, 403 and 702 and 703, each Party waives any objection to the validity and admissibility of data generated in the course of performance of Work under this CO/AOC, if such data has been collected or generated in compliance with this CO/AOC, and validated in accordance with the QA/QC procedures set forth in the SAP. The Parties do not waive their rights to object to the relevance or the interpretation of, or the conclusions to be drawn from, such validated data.

18.3 P4 agrees not to assert any business confidentiality claim, or attorney-client or attorney work product privilege, with respect to any analytical data relating to sampling, monitoring, or other activities required to be performed under this CO/AOC, or with respect to observations of conditions at or resulting from releases at the Site made or generated in the course of the performance of the Work pursuant to this CO/AOC. P4 may assert a claim of business confidentiality or other privilege covering any other type of information generated pursuant to the requirements of this CO/AOC, provided, in the case of a business confidentiality claim only, that such claim is consistent with the language of Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and is asserted in the manner described in 40 C.F.R. § 2.203. If no claim of confidentiality or other privilege accompanies the information when it is received by IDEQ, it may

be made available to the public without further notice.

18.4 In the event P4 decides to withhold any document or information otherwise required to be disclosed by the provisions of this CO/AOC on the basis of a claim of privilege, it shall inform IDEQ of that decision and provide IDEQ with the date, author, recipient(s), title, and description of the document or information withheld. P4 shall also identify which privilege(s) it asserts applies to the document or information withheld and explain the basis for its assertion. Based on the information supplied by P4, IDEQ shall determine whether to accept P4's claim of privilege. In the event IDEQ disagrees with P4's claim of privilege, P4 shall promptly disclose the document or information previously withheld, unless P4 disputes IDEQ's determination by invoking the Dispute Resolution provisions of Section XXII of this CO/AOC.

18.5 IDEQ and its authorized representatives, and Support Agency personnel accompanied or authorized by the OSC, shall have the authority at all reasonable times to inspect activities at the Sites and conduct such tests on the Sites as deemed necessary and may use cameras, sound recording devices, or any other equipment needed to verify data submitted or monitor activities undertaken by P4. P4 may request split or duplicate samples under paragraph 18.1 of this CO/AOC and, upon request, shall also be entitled to inspect and make copies of any test results, recordings, photographs, or other non-privileged information or materials generated during or as a result of the inspection conducted by IDEQ. Subject to the provisions in paragraph 18.4 of this CO/AOC, IDEQ and its authorized representatives, and the Support Agencies and their authorized representatives accompanied or authorized by the OSC shall be allowed to inspect and make copies of all records, operating logs, contracts, files, photographs, sampling and monitoring data, or any other non-privileged documents related to the Work required under this CO/AOC. Any claim that such materials may be privileged shall be governed by paragraph 18.4 of this CO/AOC. Nothing herein is intended to limit or to expand in any way the right of entry or inspection authority of IDEQ or the Support Agency under CERCLA or any other applicable legal authority.

XIX. WORK STOPPAGE

19.1 IDEQ reserves the right to stop Work from proceeding, either temporarily or

permanently, on any task, activity or Deliverable at any point during performance of the Work required under this CO/AOC if P4 materially fails to comply with the terms of this CO/AOC; provided, however, that IDEQ must provide P4 with written notice to stop Work and its reasons for doing so, unless IDEQ determines that an imminent and substantial endangerment to human health, welfare or the environment exists at the Site, such that written notice is impracticable.

XX. EMERGENCY RESPONSE AND NOTIFICATION

20.1 If any incident or change in Site conditions during the Work conducted by P4 pursuant to this CO/AOC on the Sites, causes or threatens to cause an endangerment to the public health, welfare, or the environment, P4 shall immediately notify the OSC of the incident or Site conditions. If the OSC is unavailable, P4 shall notify the EPA Region 10, Emergency Response and Site Cleanup Unit, 24 Hour Duty Officer, (206) 553-1263. If, in the course of P4's performance of the Work under this CO/AOC on the Site, IDEQ determines there is an imminent and substantial endangerment to human health, welfare or the environment due to unanticipated or changed circumstances at the Site, IDEQ shall notify P4 in writing of modifications to the Work Plan and Specifications, and/or the Deliverables that IDEQ deems necessary to address the immediate threat. Within five (5) working days of the receipt of such notification, P4 shall notify IDEQ in writing whether it agrees to perform the work required under the proposed modifications. If the Parties agree in writing to the proposed modification to the Work Plan and/or the new Deliverables, the modifications to the Work Plan and Specifications and/or the new Deliverables shall become an attachment to this CO/AOC and incorporated herein.

20.2 If P4 does not agree to perform the Work required by the proposed modifications, IDEQ may perform the proposed Work or take any action it deems necessary under section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and applicable state law and may seek recovery of any costs it incurs performing such proposed Work pursuant to applicable law. The Parties agree that any determination by IDEQ that an immediate response at the Sites is required shall not be subject to the dispute resolution provisions in Section XXII of this CO/AOC.

20.3 Nothing in this CO/AOC shall be deemed to grant, limit or affect any authority of any agency of the United States or the State of Idaho, under any statute or agreement other than

this CO/AOC and the MOU, to take, direct, or order any or all appropriate action to protect human health, welfare or the environment.

XXI. ADDITIONAL INVESTIGATION AND ANALYSIS

21.1 If IDEQ determines that additional Work on the Sites is required to meet the objectives of this CO/AOC and that work is not covered by Section XX above, it may notify P4 in writing of its determination and specify any proposed changes to any Deliverable to reflect the additional Work. Within ten (10) working days of receipt of the written determination of IDEQ that additional Work is required, P4 shall provide written notification to IDEQ, stating whether or not it agrees to perform the additional Work. P4 may implement certain additional Work or modifications to the Work based on a verbal agreement between the OSC and the Project Coordinator; however, in such cases, written confirmation of that agreement shall be transmitted between the OSC and Project Coordinator within ten (10) days of such agreement. If P4 agrees to perform the additional Work, within fifteen (15) days of its notice of agreement to IDEQ it shall submit to IDEQ a revised Work Plan or other appropriate Deliverable describing and providing a schedule for performance of the additional Work. If IDEQ and P4 agree in writing to the revisions to the Work Plan and/or the new Deliverable, the revised Work Plan and/or the new Deliverable shall become an attachment to this CO/AOC and incorporated herein. P4 shall perform all agreed upon additional tasks, including providing any additional analytical results and reports as required by the revised Work Plan and/or the new Deliverable. If P4 elects not to perform the additional Work, IDEQ may perform the work or take any action it deems necessary under applicable law, and may seek recovery of any costs it incurs performing such work pursuant to applicable law. Any determination by IDEQ that additional Work is required at the Sites shall be subject to the dispute resolution provisions in Section XXII of this CO/AOC.

21.2 If after collection of the initial data provided in the SI Work Plans, the OSC determines that additional data is needed, consistent with the SOW, the OSC may request that P4 proceed with the draft and final SI Reports, with the condition that P4 will supplement the SI Reports with the additional data collected under a modified SI Work Plan. In addition, if prior to the completion of the SI Work Plans, IDEQ determines that sufficient data has been collected with

respect to a particular position or issue then IDEQ may accelerate the SI report and EE/CA process with respect to that particular portion or issue. The OSC's election to undertake this approach may result in two or more EE/CAs, the combination of which will address all pathways for the release or threatened release of hazardous substances at the Sites. P4 will complete the initial EE/CAs on the schedule provided in the SOW. P4 will complete the subsequent EE/CAs on a schedule provided in a revised EE/CA Work Plan. Any determination by IDEQ that P4 must perform additional Work or other tasks requested by IDEQ under this paragraph, shall be subject to the dispute resolution provisions in Section XXII of this CO/AOC.

XXII. DISPUTE RESOLUTION

22.1 The dispute resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under this CO/AOC. A dispute shall be considered to have arisen when P4 serves IDEQ or Support Agency with a written Notice of Dispute. A Notice of Dispute shall be served by facsimile, overnight mail, or some equivalent service.

22.2 In the first instance, the Parties shall attempt to resolve any dispute arising under this CO/AOC by informal negotiations. The period for informal negotiations shall not exceed thirty (30) days from the date of receipt of the Notice of Dispute, unless IDEQ or the Support Agency and P4 agree in writing to modify the period for informal negotiations. If the Parties fail to resolve the dispute informally, the formal dispute resolution procedure in the following Paragraphs shall apply.

22.3 In the event the Parties cannot resolve the dispute through informal negotiations, then the position of IDEQ or the Support Agency shall be binding unless, within seven (7) days after the conclusion of the informal negotiations period, P4 invokes the formal dispute resolution procedures of this Section by serving on IDEQ or the appropriate Support Agency a written Statement of Position on the matter in dispute. P4's written Statement of Position shall be sent by facsimile, overnight mail, or some equivalent service, and shall define the dispute and state the basis of P4's objections to the position of IDEQ or the Support Agency.

22.4 Following receipt of P4's Statement of Position, IDEQ or the appropriate Support Agency shall promptly provide the appropriate supervisory office with a copy of P4's Statement of

Position and a written response to that Statement. IDEQ or the Support Agency shall simultaneously send its response to P4 by facsimile, overnight mail or some equivalent service. The appropriate supervisory office is the Director of the Department of Environmental Quality for IDEQ. The appropriate supervisory office is the Director of the Environmental Cleanup Office for EPA.

22.5 Following receipt of P4's Statement of Position and IDEQ's or the Support Agency's response, the appropriate supervisory office shall make a final determination resolving the matter in dispute.

22.7 Any decision made by IDEQ or the Support Agency pursuant to this section shall not constitute a final agency action subject to judicial review unless and until IDEQ or the Support Agency commences a judicial action to enforce this CO/AOC, in which case any challenge to the Director's final determination shall be subject to the Idaho Administrative Procedures Act, Idaho Code § 67-5273.

22.8 Nothing in this CO/AOC precludes the Parties from agreeing to use other forms of alternative dispute resolution in lieu of the procedures described in paragraphs 22.3 – 25.5.

22.9 Upon completion of all dispute resolution procedures under this section, P4 shall proceed in accordance with the final determination regarding the matter in dispute. If P4 does not perform any required Work in accordance with the final determination, IDEQ may perform the Work and/or pursue any other appropriate relief, including judicial enforcement of this CO/AOC pursuant to Idaho Code § 39-108, Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), and cost recovery pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) or other applicable law.

22.10 The invocation of the dispute resolution provisions of this CO/AOC shall not extend, postpone or affect in any way any unrelated obligation of P4 under this CO/AOC not directly in dispute, unless the Parties agree in writing otherwise. Stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the CO/AOC; provided, however, that stipulated penalties shall not accrue with respect to a matter subject to Dispute Resolution (Section XXII), during the period, if any, beginning on the day P4 serves IDEQ with a

written Notice of Dispute until the date that IDEQ issues a final decision regarding such dispute. In the event P4 does not prevail on the disputed matter, stipulated penalties shall be assessed and paid as provided in Section XXVI, unless otherwise agreed by the parties in writing.

XXIII. FORCE MAJEURE

23.1 Delays or inability to perform any of the requirements of the CO/AOC within the time limits prescribed shall not be a violation of the CO/AOC where performance is prevented or delayed by a force majeure event. Force majeure is defined as any event arising from causes beyond the control of P4, of any entity controlled by P4, or of P4's contractors, that delays or prevents performance of any obligation under this CO/AOC, despite P4's best efforts to fulfill the obligation. Force majeure does not include the financial inability of P4 to complete performance of the obligation or increased cost of performance. P4 shall have the burden of proving force majeure by a preponderance of the evidence.

23.2 If any event occurs that may materially delay performance of any obligation under this CO/AOC or submittal of any Deliverable past the applicable deadline, P4 shall notify the OSC within twenty-four (24) hours of the time P4 knew that the event would delay such performance or submittal. Within five (5) business days thereafter, P4 shall notify IDEQ in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with these requirements shall waive any claim of force majeure by P4.

23.3 The OSC shall notify P4 in writing of the determination by IDEQ as to whether force majeure applies to the event or circumstances within seven (7) days after receipt of written notice from P4. If IDEQ determines that the delay has been or will be caused by circumstances constituting a force majeure, the due date for each uncompleted task in this CO/AOC shall be extended for a sufficient period to complete the tasks that were delayed or prevented. Such period shall be at least equal to the delay resulting from the force majeure circumstance. If IDEQ disagrees with P4's force majeure claim, or if there is no agreement on the length of an extension of time, the dispute shall be resolved in accordance with the dispute resolution provisions in Section XXII of this CO/AOC or the stipulated penalties provisions of Section XXVI, as

appropriate.

XXIV. REIMBURSEMENT OF STATE COSTS

24.1 Costs incurred by IDEQ with respect to the Sites under this CO/AOC will be reimbursed in the following manner:

24.1.1 As an initial deposit, P4 will pay the sum of Ten Thousand Dollars to be deposited to an account established for this site

24.1.2 Thereafter, IDEQ shall provide a quarterly accounting and invoice to P4 of Costs incurred by IDEQ in relation to this CO/AOC. "Costs" subject to reimbursement under this paragraph shall mean all direct or indirect costs incurred by IDEQ after January 28, 2002 in connection with IDEQ's support of Work performed by or on behalf of IDEQ under this CO/AOC, as set forth and described in the SOW or for work performed prior to this CO/AOC but used in support thereof, including but not limited to: reasonable time and travel costs associated with oversight of the Work performed under the SOW; IDEQ's contractor costs; compliance monitoring, including the collection and analysis of split samples; Site visits; review and approval or disapproval of reports; reasonable overhead charges and any other costs directly or indirectly incurred in overseeing this CO/AOC.

24.1.3 Within thirty (30) days of P4's receipt of IDEQ's quarterly accounting invoice, P4 shall reimburse the State for all costs reflected in the accounting invoice.

24.1.4 The initial deposit will be returned to P4 within sixty (60) days of the date IDEQ incurs final response costs.

24.2 All payments necessary to IDEQ shall be made to:

Administrative Services-Accounts Receivable
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706-1255

24.3 P4 may dispute payment of any portion of IDEQ's submitted costs, but only on the basis of accounting errors, the inclusion of costs outside the scope of this CO/AOC, the inclusion of costs inconsistent with State regulations or the inclusion of costs that have not been paid or approved for payment by IDEQ. Disputes regarding oversight costs will be resolved using

the dispute resolution procedures described in Section XXII. Any objection by P4 shall be made in writing within forty-five (45) days of receipt of the Quarterly Billing and shall specifically identify the disputed costs and the basis of the dispute. All undisputed costs shall be remitted by P4 in accordance with the provisions in the preceding paragraphs of this section. In any Dispute Resolution proceeding, P4 shall bear the burden of establishing its contentions as to inappropriate costs. If IDEQ prevails in the Dispute Resolution proceeding, P4 shall remit the amount(s) in question, including any applicable interest, within thirty (30) days after receipt of the final determination.

XXV. REIMBURSEMENT OF EPA AND FWS COSTS

25.1. P4 shall reimburse EPA for all Future Response Costs associated with the Sites. Future Response Costs for purposes of this Section shall mean all costs, direct and indirect, that EPA incurs after April 30, 2003, in connection with negotiating, overseeing, implementing, or enforcing the terms of this CO/AOC, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XVII (Access), Section XX (Emergency Response), and Section XXI (Additional Investigation and Analysis).

25.1.1. P4 shall reimburse EPA for all Past Response Costs associated with the Sites. Past Response Costs for purposes of this Section shall mean all costs, direct and indirect, that EPA incurred through April 30, 2003, in connection with the Sites. The parties agree that Past Response Costs incurred by EPA total \$7162.09 and are limited to this amount.

25.1.2. For purposes of this Section, Interest shall accrue at the rate established under Section 107(a) of CERCLA, 42 U.S.C. § 9607. The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

25.1.3. EPA shall submit to P4 after the effective date of this CO/AOC a billing statement for Past Response Costs and subsequently shall submit to P4 on a periodic basis a billing statement for Future Response Costs. All billing statements shall include a SCORPIOs report or other accounting certified by EPA.

25.1.4. Within thirty (30) days of receipt of each billing statement, P4 shall remit

a certified or cashier's check or make payment by wire transfer for the total amount of such costs, except as provided in paragraph 25.3. Checks shall be made payable to the Hazardous Substances Superfund and shall be accompanied by a statement referencing SE Idaho SE/Monsanto Sites, Site ID No. 109Q; EPA Docket No. CERCLA -10-2003-0117, In the Matter of Enoch Valley Mine, Henry Mine, Ballard Mine; P4 Production, LLC, Respondent. Checks shall be sent to :

Mellon Client Service Center
EPA Region 10
500 Ross Street
P.O. Box 360903M
Pittsburgh, Pennsylvania 15251-6903.

25.1.5. At the time of payment, P4 shall send notice that payment has been made to: Financial Management Officer (Mail Code OMP-146), USEPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

25.1.6. The total amount to be paid by P4 pursuant to this section shall be deposited in the SE Idaho SE/Monsanto Sites Special Account within the Hazardous Substances Superfund to be retained and used to conduct or finance response actions at or in connection with the Sites.

25.1.7. In the event that payment for either Past Response Costs or Future Response Costs is not made within thirty (30) days of receipt of the billing statement, P4 shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of receipt of the billing statement, notwithstanding any dispute or objection to any portion of the cost, and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of P4's failure to make timely payments under this Section, including but not limited to, the payment of stipulated penalties pursuant to Section XXVI.

25.2.1 P4 hereby agrees to commit the sum of up to fifteen thousand dollars (\$15,000) per year to pay FWS' reasonable Costs. "Costs," for the purposes of this paragraph, shall mean all direct and indirect costs incurred in connection with FWS' support of Work performed by or on behalf of IDEQ under this AOC/CO, as set forth and described in the SOW,

including, but not limited to, time and travel costs associated with oversight of the work performed under the SOW; contractor costs; compliance monitoring, including the collection and analysis of split samples; site visits; discussions regarding disputes that may arise under this AOC/CO; review and approval or disapproval of reports; and any other costs directly incurred in overseeing this AOC/CO. No later than December 1 of each year, FWS shall submit to P4 an estimated annual Cost budget. Within 30 days of receipt of the estimated annual budget, P4 shall deposit with the FWS an amount equal to the estimated annual budget or \$15,000, whichever is less.

25.2.2 The FWS shall use such monies to establish an account fund dedicated solely to its activities associated with this AOC/CO, in accordance with the Appropriations Act for the Department of the Interior and Related Agencies of 2000, Pub. L. 106-113, 113 Stat. 150, and other applicable statutes, regulations and guidance. Within 180 days of the execution of this AOC/CO, and every 180 days thereafter, the FWS shall provide P4 an accounting of its costs, including supporting cost summaries.

25.2.3. Payments to FWS shall be made by certified or cashier's check made payable to the United States Fish and Wildlife Service and mailed to:

U.S. Fish & Wildlife Service
ATTN: Debra Freeman
911 N.E. 11th Avenue
Portland, OR 97232-4181

Each check shall reference:

Site Name: Southeast Idaho Phosphate Mining - Enoch Valley Mine, Henry Mine and Ballard Mine AOC

25.2.4 Within 120 days after completion of FWS support activities under this AOC/CO, FWS shall provide P4 with a final cost accounting. In the event that the monies remain in the Fund, the FWS shall reimburse P4 within 30 days of submission of the final cost accounting.

25.3. P4 may dispute payment of any portion of EPA and/or FWS's response costs, but only on the basis of accounting errors or the inclusion of costs inconsistent with the NCP. Disputes regarding EPA and FWS Response Costs will be resolved using the dispute resolution procedures described in Section XXII. Any objection by P4 shall be made in writing within forty-

five (45) days of receipt of the billing statement and shall specifically identify the disputed costs and the basis of the dispute. Disputed costs shall be paid by P4 into an interest-bearing escrow account while the dispute is pending. All undisputed costs shall be remitted by P4 in accordance with the provisions in the preceding paragraphs of this Section. In any dispute resolution proceeding, P4 shall bear the burden of establishing an accounting error, the inclusion of costs inconsistent with the NCP, the inclusion of costs for work outside the scope of this CO/AOC or the inclusion of costs that have not been paid, or approved for payment by EPA or FWS. If EPA or FWS prevails in the dispute resolution proceeding, P4 shall remit the amount(s) in question, including any applicable interest, within 30 days after receipt of the final determination. If P4 prevails concerning any aspect of the contested costs, P4 shall pay that portion of the costs for which it did not prevail in the manner described in the preceding sentence. P4 shall be disbursed any balance of the escrow account.

XXVI. STIPULATED PENALTIES

26.1 Unless there has been a written modification of a compliance date or other requirement of this CO/AOC by IDEQ, or a force majeure event as defined herein, in the event P4 fails to meet any material requirement of this CO/AOC, P4 shall pay stipulated penalties in the amount of \$1,000 per day, per violation for the 1st through 14th days of noncompliance; \$3,000 per day, per violation for the 15th through 30th day of noncompliance; and \$7,500 per day, per violation for the 31st day of noncompliance and every day thereafter. Compliance by P4 shall include complete and timely performance of each activity required under this CO/AOC including but not limited to reimbursement of response costs pursuant to Section XXIV and XXV, or complete and timely performance of all Work described in any plan, statement or Deliverable approved under this CO/AOC.

26.2 All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity; provided, however, that stipulated penalties shall not accrue: (1) with respect to a deficient submission of a Deliverable under Section IX (Work to be Performed), during the period, if any, beginning on the day of IDEQ's receipt of such

submission until the date that IDEQ notifies P4 of any deficiency and P4 fails to cure the deficiency within seven (7) days of that notice; (2) with respect to a matter subject to Dispute Resolution (Section XXII), during the period, if any, beginning on the day P4 serves IDEQ with a written Notice of Dispute until the date that IDEQ issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this CO/AOC.

26.3 IDEQ will advise P4 in writing of any stipulated penalties owed by P4 pursuant to this section. All penalties shall be paid by certified or cashier's check within thirty (30) days of the date of receipt of the demand for payment, unless P4 has properly disputed such demand or related notice of violation. Interest shall begin to accrue on the unpaid balance at the end of the thirty (30) day period. Interest shall accrue at the rate provided in applicable law. Payment shall be made in accordance with instructions provided by IDEQ.

26.4 The stipulated penalties provided for in this section of the CO/AOC shall be the exclusive monetary penalty for violations of this CO/AOC. The provisions in this section, however, do not preclude IDEQ from pursuing any other remedies or sanctions that may be available by reason of P4's failure to comply with any of the requirements of this CO/AOC, nor shall payment of stipulated penalties relieve P4 of the responsibility to comply with any requirement of this CO/AOC. Notwithstanding any other provision of this section, IDEQ may at any time and in its unreviewable discretion, waive any portion of the stipulated penalties that have accrued pursuant to this CO/AOC.

XXVII. OTHER CLAIMS

27.1 By entering into this CO/AOC, the Parties assume no liability for injuries or damages to persons or property resulting from any acts or omissions of any other Party. No Party shall be deemed to be a Party to any contract entered into by any other Party or its contractors, to carry out actions pursuant to this CO/AOC.

XXVIII. ENFORCEMENT

28.1 Except for the provisions of section XXV of this CO/AOC related to EPA cost

recovery and as provided in this paragraph 28.1 below, responsibility for enforcement of the CO/AOC shall be vested in IDEQ as Lead Agency. Determinations regarding compliance with the terms of the CO/AOC and related enforcement actions shall be made by the Lead Agency with the concurrence of Support Agencies and subject to dispute review provisions set forth in the July 17, 2000 MOU. Notwithstanding the foregoing, however, the EPA and Forest Service specifically reserve the right to bring an action to enforce this CO/AOC in circumstances where the Lead Agency has failed to take or is unable to take and/or pursue enforcement action. Furthermore, as provided in Section XXIX of this CO/AOC, the Support Agencies reserve the right to exercise their separate, statutory and regulatory enforcement authorities with respect to the Sites.

XXIX. RESERVATION OF RIGHTS

29.1. Except as expressly provided in this CO/AOC, the State of Idaho and IDEQ and the United States reserve all rights, claims and defenses they may have, including the right to bring an action against P4 under Section 107 and 113 of CERCLA, 42 U.S.C. § 9607 and 9613, or Idaho Code §§39-108(3)(a)(v) and 39-4413(A)(1)(d), for recovery of any unreimbursed response costs incurred in connection with the Site. Nothing in this CO/AOC shall be construed as releasing P4 from liability, if any, for its actions. The State of Idaho, IDEQ and the United States reserve the right to take any enforcement action pursuant to CERCLA or any other legal authority for relief, including, but not limited to, injunctive relief, monetary penalties, and punitive damages for any violation of this CO/AOC, except as provided in Paragraphs 26.4 and 28.1.

29.2 Nothing in this CO/AOC shall be construed as releasing the United States or any of its agencies or departments from any liability for any of its actions. P4 also reserves any defense that may be asserted by law in response to any enforcement action taken by the United States with respect to the Site.

29.3 P4 reserves, and this CO is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his

office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for damages caused, in whole or in part by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 USC 2671; *nor shall such claim include a claim based on EPA's selection of response actions, or the oversight or approval of P4's plans or activities.* The foregoing applies only to claims which are brought pursuant to statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

29.4 IDEQ expressly reserves the right to seek further relief to address contamination or pollution resulting from the matters addressed herein. Nothing herein shall be deemed to bar such further relief and this agreement shall not operate pursuant to Idaho Code 39-108(3)(a)(v) to preclude the IDEQ from seeking additional relief.

29.5 Nothing in this CO/AOC shall be construed to limit the power and authority of IDEQ or appropriate Support Agencies to take, direct, or order all actions necessary to protect the public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances at or from the Sites, as permitted under applicable law.

29.6 Except as expressly provided in this CO/AOC, P4 reserves all rights, claims and defenses it may have, including the right to bring an action against the State of Idaho and/or its agencies and departments under CERCLA for recovery of any response costs incurred in connection with the Site under Sections 113 and 120 of CERCLA. Nothing in this CO/AOC shall be construed as releasing IDEQ from any liability for any of its actions. P4 also reserves any defense that may be asserted by law in response to any enforcement action taken pursuant to IDEQ's reservation of rights in this section.

29.7 P4 reserves, and this CO/AOC is without prejudice to, claims against IDEQ, subject to the provisions of the Idaho Code, respectively, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of IDEQ while acting within the scope of his/her office or employment under

circumstances where IDEQ, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a state employee; nor shall any such claim include a claim based on IDEQ's selection of response actions, or the oversight or approval of P4's plans or activities. The foregoing applies only to claims, which are brought pursuant to a statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

XXX. INDEMNIFICATION

30.1 P4 agrees to indemnify and hold the State of Idaho and the United States and their agencies, departments, agents and employees, harmless from all claims of third parties arising from acts or omissions of P4 or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this CO/AOC.

30.2 Subject to the limitations and procedures of the Idaho Tort Claims Act, Idaho Code § 6-901-29, IDEQ agrees to indemnify P4 and its agents and employees from all claims of third parties arising from acts or omissions of the IDEQ or those acting on its behalf, including its officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this CO/AOC to the extent that such a claim could be made against IDEQ under the Idaho Tort Claims Act, Idaho Code § 6-901-29.

30.3 In performing any of the Work required by this CO/AOC, P4 has an affirmative duty to protect from injury and damage lands of the United States. Damage includes, but is not limited to, fire suppression costs and all costs and damages associated with restoration or rehabilitation of natural resources associated with P4's implementation of this CO/AOC. P4 shall be liable for damage to all roads and trails of the United States caused by the use of P4, or those acting on its behalf, except that damage shall not include reasonable and ordinary wear and tear.

XXXI. NOTICE OF COMPLETION

31.1 Upon completion of all requirements under this CO/AOC, P4 shall certify in writing to IDEQ that all requirements under this CO/AOC, including any additional Work and payment of stipulated penalties, have been completed. The certification shall be signed by a representative of P4 with the requisite knowledge and authority, and shall include the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." If IDEQ agrees with P4's certification it will so notify P4 in writing and this CO/AOC, with the exception of any continuing obligations, shall be terminated, with respect to the portion of the Sites so certified. For the purposes of this section, continuing obligations shall include, but not be limited to, the following obligations contained in this CO/AOC: Section XII (Record Preservation), Section XXVIII (Reservation of Rights) and Section XXX (Indemnification). If IDEQ determines that any requirements of this CO/AOC have not been completed by P4, they will notify P4 in writing and specify the deficiencies. P4 shall correct such deficiencies in accordance with the notice of IDEQ. Failure by P4 to correct such deficiencies shall be a violation of this CO/AOC.

XXXII. MODIFICATION

32.1 Modification to any plan or schedule may be made, in writing, by the OSC or at the OSC's direction. If the OSC makes an oral modification, it will be memorialized in writing within 10 days; provided, however, that the modification effective date shall be the date of the OSC's oral direction. In the event P4 disagrees with any modification proposed under this paragraph, such disagreement shall be resolved in accordance with the dispute resolution provisions of this CO/AOC.

XXXIII. MISCELLANEOUS

33.1 During the performance of this CO/AOC, P4 agrees that in connection with the performance of Work under this CO/AOC, P4 shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. P4 shall include and require compliance with the above nondiscrimination provision in any contract or subcontract made with respect to this CO/AOC. IDEQ shall have the right to enforce

the foregoing nondiscrimination provisions by suit for specific performance or any other remedy under the laws of the United States or the state in which the breach or violation occurs.

33.2 If, while implementing the terms of this CO/AOC, P4 discovers any objects of historic or scientific interest, it shall notify the OSC and leave such discoveries intact until and unless otherwise instructed by the OSC. For the purposes of this paragraph, objects of historic or scientific interest include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts. Compliance with any protective and mitigative measures specified by the OSC shall be P4's responsibility.

P4 Phosphate Mine Sites
Consent Order/Administrative Order on Consent

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

By: 

Name: Stephen Allred

Title: Director, Idaho Department of Environmental Quality

Date: Sept 29, 2003

24 Phosphate Mine Sites
Consent Order/Administrative Order on Consent

24 Production, L.L.C.

By: Bruce E. Pallante

mms

Name: BRUCE E. PALLANTE

Title: V.P., P₄ Production, L.L.C.

Date: Sept 2, 2003

-4 Phosphate Mine Sites
Consent Order/Administrative Order on Consent

United States Environmental Protection Agency
Region 10.

By: 

Name: Michael F. Gearheard

Title: Director, Office of Environmental Cleanup

Date: 19 Sept. 2003

Phosphate Mine Sites
Consent Order/Administrative Order on Consent

United States Department of Agriculture, Forest Service,
Region 4

By: William P. Levere

Name: WILLIAM P. LEVERE

Title: ACTING REGIONAL FORESTER

Date: 9/16/03

RECEIVED
SEP 22 2003
Office of the Attorney General
IDEU



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 514-5271
Facsimile (202) 353-9297

October 24, 2003

Ron McClain
Deputy Assistant General Counsel
United States Department of Agriculture
Room 3351
14th & Independence Avenue, S.W.
Washington, D.C. 20250

Re: Request for concurrence in Administrative Order on
Consent, Enoch Valley, Henry, and Ballard Phosphate
Mines, EPA Docket No. CERCLA-10-2003-0117

Dear Mr. McClain:

This is to advise you that pursuant to section 4(b)(1) of Executive Order 12580 (January 23, 1987), as amended by Executive Order 12016 (August 28, 1996), the United States Department of Justice, Environment & Natural Resources Division, concurs in the attached Administrative Order on Consent with P-4 L.L.C. regarding the performance of an Engineering Evaluation/Cost Analysis at the Enoch Valley, Henry, and Ballard Mines, outside Soda Springs, Idaho.

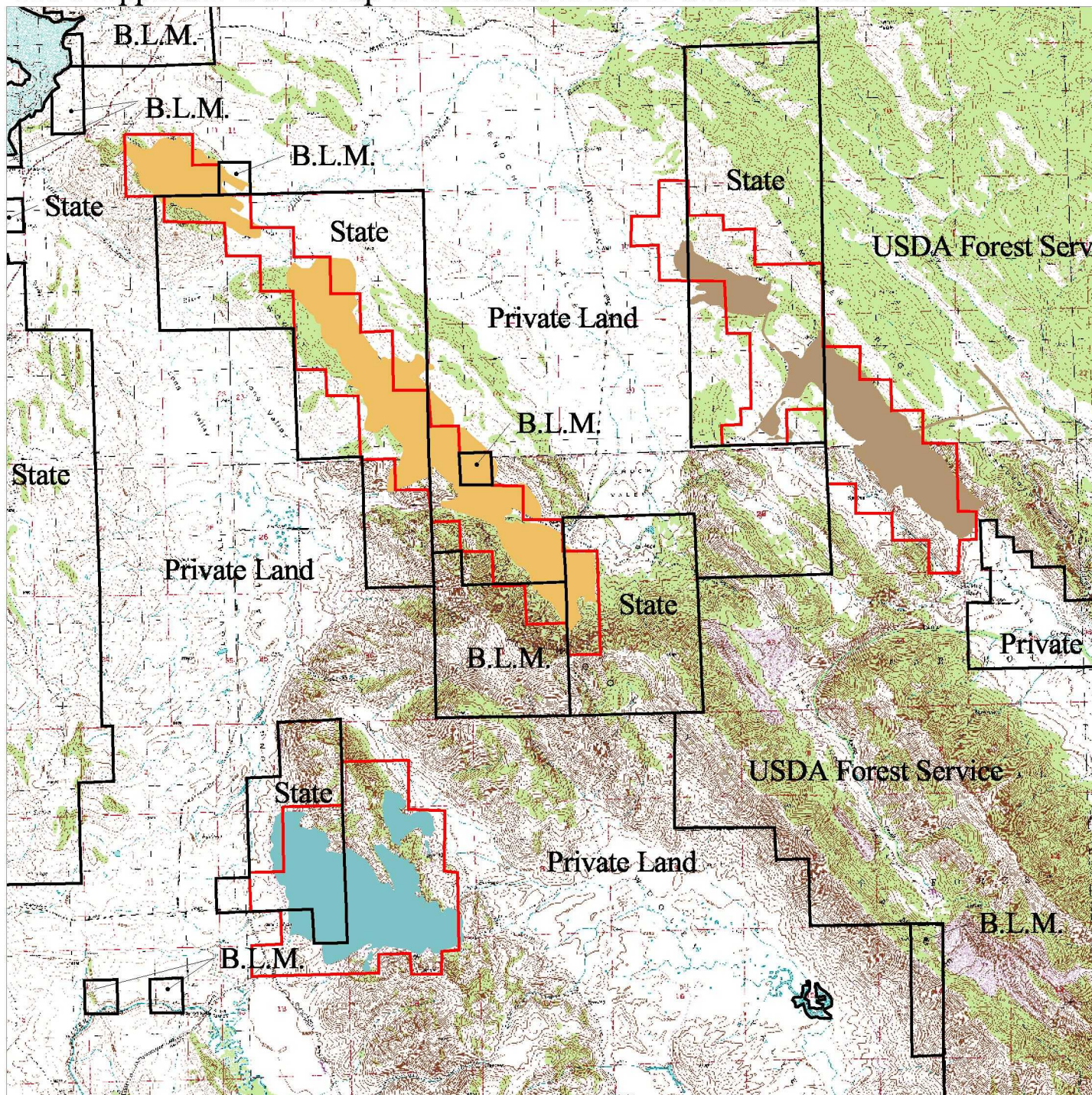
Sincerely,

CATHERINE R. MCCABE
Deputy Section Chief
Environmental Enforcement
Section

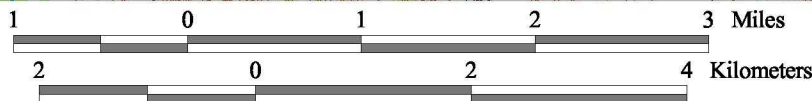
cc: James Alexander, Esq. (US Forest Service-R.4)
Mar: Nitcynski, Esq. (USDOJ-EDS)
Frederick Phillips, Esq. (USDOJ-EES)

AOC Effective Date 11/14/03

AOC Appendix 4: Site Map of Monsanto Mines in Southeast Idaho



October 8, 2003



Restriction of Liability: Neither the State of Idaho nor the Idaho Department of Environmental Quality, nor any of their employees make any warranty, express or implied, or assume any legal liability or responsibility for the accuracy, completeness or usefulness of any information or data provided. Metadata is provided for all data sets, and no data should be used without first reading and understanding its limitations. The data could include technical inaccuracies or typographical errors. The Department of Environmental Quality may update, modify, or revise the data used at any time, without notice.

Legend

- Ownership Boundaries
- Monsanto Mine Boundaries
- Ballard Mine Area of Operations
- Enoch Valley Mine Area of Operations
- Henry Mine Area of Operations



**APPENDIX 1: STATEMENT OF WORK FOR SITE INVESTIGATIONS (SIs)
AND ENGINEERING EVALUATIONS/COST ANALYSES (EE/CAs)
AT P4 PRODUCTION'S
ENOCH VALLEY, BALLARD, AND HENRY MINES**

TASK 1: SCOPING (Work Plans delivered within 60 days of Order execution)

- A. P4 Production will prepare and submit separate work plans for performing Site Investigations (SIs) and Engineering Evaluations/Cost Analyses (EE/CAs) at each separate mine.
- B. The SI Work Plans will provide a comprehensive mine description, including, but not limited to:
 - Mine history and description.
 - Historical operations/ownership (adjacent/surrounding owners, potential receptors, etc.).
 - Existing topographic features/modifications (pre- and post-land surfaces, area of features, elevations, etc.).
 - Associated ancillary mine activities (maintenance facilities, industrial operations, transportation corridors, etc.) and any known or recorded releases of any hazardous substances.
 - Existing relevant mine-specific information/data (i.e., hydrology, climatology, geology, hydrogeology, ecology, design, and available as-built construction details for all dumps/fills, etc.).
 - Additional data (estimated waste quantities, locations, design, volume, holding/catchment ponds, production/processing facilities, monitoring data, background sampling data, etc.).
- C. The SI Work Plans shall propose the work to be performed, and specify the approach, schedule, and rationale for performing each activity. Conceptual Site Models will be included for each subject mine. Each such model will address contaminants, exposure pathways, and receptors of potential concern. Each such plan will specify sampling strategies and methodologies, environmental target media, analytes, and data quality objectives. A project management plan will also be included specifying points of contact, responsibilities, data handling, reporting, pre-scheduled meetings, etc. A suggested format for the SI Work Plans is provided in Attachment A.
- D. The EE/CA Work Plans will describe the evaluation process to be implemented upon completion of the SIs. The plans shall describe the data evaluation process, risk assessment protocols for any human health and ecological assessments, required bench- or pilot-scale treatability investigation processes, procedures for identification and comparative analysis of removal alternatives, and proposed schedule of the EE/CA process. A suggested format for the EE/CA Work Plans is provided in Attachment A.
- E. Separate SI and EE/CA Reports will be required for each mine to allow for maintenance of site-specific administrative records, and management of future site actions and regulatory decision-making. Combined documents may be used for certain Sampling and Analysis Plan components (e.g., QAP, HSP) having similar procedures, but the Field Sampling Plans and SI reports will be submitted under separate cover for each mine.

TASK 2: PLANNING (SAPs delivered within 20 days of work plan approvals)

- A. P4 Production will prepare and submit a Sampling and Analysis Plan (SAP), including Field Sampling Plan (FSP), Health and Safety Plan (HSP), and Quality Assurance Plan (QAP) for implementation of the SI at each subject mine. P4 Production shall provide a separate FSP for each mine, but may chose to develop a multi-mine programmatic plan for HSPs and QAPs covering similar analytical and field sampling activities. Suggested formats for the SAP are provided in Attachment A.
- B. P4 Production has planned many investigational and engineering activities and studies at each of its mines. Some of these activities have been conducted pursuant to mine permits, some pursuant to agreed order with IDEQ in conjunction with other members of the Idaho Mining Association's Selenium Committee (IMA), and some done voluntarily, including mine-specific surface water and sediment investigation work initiated in 2002 at the request of IDEQ and with the agency's explicit assurance that said work would be credited toward the mine-specific CO to which this SOW is attached. In addition to work of this nature done by P4 Production, much work that could be relevant has been and is being done by or for many entities, including but not limited to:
- IMA and each of its other four member companies--Agrium, Astaris (including FMC), Rhodia, and Simplot;
 - IDEQ;
 - IDH;
 - IDL;
 - USFS;
 - USDA;
 - USBLM;
 - USFWS;
 - USGS;
 - USDOE;
 - USBIA;
 - Shoshone-Bannock Tribes;
 - Idaho State University; and,
 - University of Idaho.

All work done by these or any other entity, that is, in IDEQ's sole discretion, of sufficient relevance and quality, may be used by P4 Production in fulfilling some of the planning requirements of Task 2.

- C. The SAP will specify the methodologies, protocols, and locations for sample collection and other data-gathering activities. It will summarize sampling objectives, frequencies, equipment, sample designations, and handling and analysis methods that will meet the data quality objectives.
- D. The HSP will be prepared in conformance with P4 Production's health and safety program, and in compliance with applicable OSHA and MSHA regulations and protocols. The IDEQ will review this document to ensure the necessary elements are included to provide for the protection of human health and safety, however, the Agency will not "approve" P4 Production's plan.
- E. The QAP will describe objectives and organization, functional activities, and quality assurance and quality control (QA/QC) procedures to be used to achieve the data quality objectives in accordance with CO requirements. It shall address sampling procedures, custody, analytical procedures, data reduction, validation, reporting, and personnel qualifications. Each laboratory to be used will submit their QA program and methods, consistent with USEPA data validation protocols, for approval. All P4 Production-generated data reporting documents will append raw lab-reported data.

- F. The Community Relations Plan (CRP) and public involvement activities for the SI and EE/CA process will be developed and managed by the IDEQ in accordance with the NCP, and may consist of a multi-mine programmatic document. P4 Production will be consulted or informed in advance of each scheduled activity undertaken pursuant to this CRP.

TASK 3: SITE INVESTIGATION (SI) (SI Reports delivered within 90 calendar days of completing fieldwork, laboratory work, and data validation)

- A. The SIs will collect the data necessary to physically characterize each site, define the sources of contamination, describe the nature and extent of on-site and off-site impacts, and support future mine evaluation, bench-/pilot-scale studies, risk assessment, and all other subsequent activities. A suggested format for the SI Reports is provided in Appendix A.
- B. P4 Production has executed many investigational activities at each of its mines. Some of these activities have been conducted pursuant to mine permits, some pursuant to agreed order with IDEQ in conjunction with other members of the Idaho Mining Association's Selenium Committee (IMA), and some done voluntarily, including mine-specific surface water and sediment investigation work initiated in 2002 at the request of IDEQ and with the agency's explicit assurance that said work would be credited toward the mine-specific CO to which this SOW is attached. In addition to work of this nature done by P4 Production, much work that could be relevant has been and is being done by or for many entities, including but not limited to:
- IMA and each of its other four member companies--Agrium, Astaris (including FMC), Rhodia, and Simplot;
 - IDEQ;
 - IDH;
 - IDL;
 - USFS;
 - USDA;
 - USBLM;
 - USFWS;
 - USGS;
 - USDOE;
 - USBIA;
 - Shoshone-Bannock Tribes;
 - Idaho State University; and,
 - University of Idaho.

All work done by these or any other entity, that is, in IDEQ's sole discretion, of sufficient relevance and quality, may be used by P4 Production in fulfilling some of the site characterization requirements of Task 3.

- C. P4 Production will characterize geology, hydrology, and hydrogeology to include seasonal flow rates, concentrations, hydraulic gradients, , aquifers, aquicludes, receiving streams, loading calculations, seeps, springs, drains, pits, ponds, and potential receptors for the mine and relevant surrounding area. All existing wells on and near the mine will be sampled, and new wells will be installed in sufficient quantity to characterize up- and down-gradient conditions in the vicinity of individual mine waste units. Water balances will be generated to represent the mine under local climatic conditions and, where

possible, correlated to a regional hydrograph. Any on-site or impacted off-site wetlands will be formally delineated by a soil scientist and described in terms of functional analysis, dominant wildlife and vegetation species, soil units, hydrology, wildlife use, etc. Analysis of off-site impacts will include transport and fate analyses, calculation of loading estimates of contaminants of potential concern (COPCs) from the mine, and assessment of adjacent watershed sub-basin impacts.

- D. P4 Production will determine the nature and extent of all surface and ground water impacts for the following chemical parameters: selenium, cadmium, chromium, copper, nickel, vanadium, and zinc. Metals will be analyzed as dissolved fractions, except for potential drinking water sources and selenium, which require total recoverable fractions. Non-chemical-specific water parameters will include pH, temperature, specific conductivity, and hardness as indicated in the attached *Summary of Project Analytical Methods*. P4 Production will complete an ion balance on sampling results.
- E. P4 Production will determine the nature and extent of on-site and off-site impacts in soils, sediments, vegetation, and other applicable media to include, but not be limited to: the locations of mine waste dumps and fills, constructed roads, reclaimed areas, seep and drain outfall areas, etc., in a manner that identifies areal trends, sub-unit values, and potential hot spots. Target parameters as specified above for surface and ground water.
- F. P4 Production shall perform any subsequent flora or fauna surveys, ecological studies, or biological sampling, including temporal data collection, required for baseline risk assessment protocols and other mine-specific needs.
- G. P4 Production shall collect data required for any proposed treatability studies or testing requirements needed to evaluate potential removal alternatives or innovative technologies. Preliminary designs for bench- or pilot-scale studies must be reviewed and approved by the IDEQ prior to initiation of such studies.
- H. P4 Production will identify and establish background levels for each sampling medium by selecting local, unimpacted reference control areas or approved historic data.

TASK 4: ENGINEERING EVALUATION/COST ANALYSES (EE/CAs) (EE/CAs delivered within 120 days of SI completion and approval and after completion of Task 3, the risk management phase of the Area-Wide Investigation)

- A. P4 Production will develop an EE/CA for each mine that includes baseline human health (as required) and ecological risk assessment summaries identifying areas exceeding action levels for site-specific conditions, identification and screening of removal alternatives, comparative analysis of applicable site alternatives, and schedule of implementation. A suggested format for the EE/CA reports is provided in Attachment A.
- B. P4 Production has executed many engineering activities and studies at each of its mines. Some of these activities have been conducted pursuant to mine permits, some pursuant to agreed order with IDEQ in conjunction with other members of the Idaho Mining Association's Selenium Committee (IMA), and some done voluntarily. In addition to work of this nature done by P4 Production, much work that could be relevant has been and is being done by or for many entities, including but not limited to:
 - IMA and each of its other four member companies--Agrium, Astaris (including FMC), Rhodia, and Simplot;
 - IDEQ;

- IDH;
- IDL;
- USFS;
- USDA;
- USBLM;
- USFWS;
- USGS;
- USDOE;
- USBIA;
- Shoshone-Bannock Tribes;
- Idaho State University; and,
- University of Idaho.

All work done by these or any other entity, that is, in IDEQ's sole discretion, of sufficient relevance and quality, may be used by P4 Production in fulfilling some of the EE/CA requirements of Task 4.

- C. P4 Production will submit work plans for any proposed treatability studies.
- D. P4 Production will identify and propose plans for interim removal action activities in areas requiring immediate measures to protect human health or the environment, or to mitigate on-going releases.
- E. P4 Production will propose mine-specific monitoring programs to assess the effectiveness of proposed removal activities.
- F. P4 Production will support selected alternatives with appropriate studies and modeling.
- G. If probabilistic risk assessment procedures are used, P4 will conform with USEPA's protocols and guiding principles on the use of these methods.

SOUTHEAST IDAHO PHOSPHATE MINING RESOURCE AREA SUMMARY OF PROJECT ANALYTICAL METHODS

(METHOD DETECTION LIMITS TO BE APPROVED BY LEAD AGENCY PRIOR TO SAMPLING)

Analyte	Water		Soil/Sed/Veg	Comments/Sample Preparation Methods
cadmium	200.8		M6020 ICP-MS	3005/3010
chromium (total)	200.7		M6010 ICP	
copper	200.8		M6020 ICP-MS	3005/3010
nickel	200.8)		M6020 ICP-MS	3005/3010
Selenium (total)	SM 3500-Se C		M7742 modified	AA-hydride generation
vanadium	200.7		M6010 ICP	NAR
zinc	200.8		M6020 ICP-MS	3005, 3010
hardness	130.2		NA	
dissolved oxygen/ pH/ temp/specific conductivity	field measurements		NA	

ANALYTICAL METHODS REFERENCES:

1. USEPA; *Methods for Determination of Metals in Environmental Samples*, Jun 1991, EPA-600/4-91-010
2. USEPA; *SW-846 Test Methods for Evaluating Solid Waste*, Nov 1986
3. APHA, AWWA, WEF; *Standard Methods for the Examination of Water and Wastewater*, 18th Ed, 1992
4. USEPA; *Methods for Chemical Analysis of Water and Wastes*, Mar 1983, EPA-600/4-79-020
5. USGS; *Methods for Determination of Inorganic Substances in Water and Fluvial Sediments*, 1979
6. USEPA; *Methods for the Determination of Inorganic Substances in Environmental Samples*, Jun 1991, EPA/600/R-93-100
7. Black, CiA; *Methods of Soil Analysis, Part 2*
8. USEPA Radiological Approved Methods

ATTACHMENT A

SUGGESTED REPORT FORMATS

(Distribution of documents should include one electronic copy and 3 hard copies for IDEQ and 1 hard copy for each person designated in Section 8.3 of the Consent Order)

SUGGESTED FORMAT FOR SI WORK PLAN

EXECUTIVE SUMMARY

1.0 INTRODUCTION

2.0 SITE BACKGROUND

- 2.1 DESCRIPTION AND SETTING
- 2.2 PAST OPERATIONS/OWNERSHIP/TYPES AND VOLUMES OF MINE-RELATED WASTE PRESENT
- 2.3 TOPOGRAPHIC FEATURES/PAST MODIFICATIONS
- 2.4 EXISTING RELEVANT SITE-SPECIFIC INFORMATION/DATA
- 2.5 PRODUCTION INFORMATION

3.0 DATA QUALITY OBJECTIVES/WORK PLAN RATIONALE

4.0 SITE INVESTIGATION TASKS

- 4.1 SURFACE WATER
- 4.2 SEDIMENT
- 4.3 GROUNDWATER
- 4.4 SOIL
- 4.5 VEGETATION
- 4.6 ECOLOGICAL/BIOLOGICAL STUDIES
- 4.7 WATER BALANCE/LOADING CALCULATIONS

5.0 PROJECT MANAGEMENT PLAN

- 5.1 PROJECT APPROACH
- 5.2 REPORTING PROCEDURES/COORDINATION
- 5.3 PROJECT ORGANIZATION/SUBCONTRACTORS
- 5.4 PROJECTED SCHEDULE

FIGURES, TABLES, APPENDICES AS REQUIRED

SUGGESTED FORMAT FOR EE/CA WORK PLAN

- 1.0 INTRODUCTION
- 2.0 SITE CHARACTERIZATION/FIELD STUDIES
- 3.0 DEVELOPMENT OF REMOVAL ACTION OBJECTIVES
- 4.0 RISK ASSESSMENT PROCESS DESCRIPTION
- 5.0 ANALYSIS OF REMOVAL ACTION ALTERNATIVES
- 6.0 SCHEDULE

FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED

SUGGESTED FORMAT FOR SAMPLING AND ANALYSIS PLAN (SAP)

- 1.0 INTRODUCTION
- 2.0 SITE BACKGROUND
- 3.0 SAMPLING OBJECTIVES
- 4.0 SAMPLE LOCATIONS AND FREQUENCY
- 5.0 SAMPLE DESIGNATION
- 6.0 SAMPLING EQUIPMENT AND PROCEDURES
- 7.0 SAMPLE HANDLING AND ANALYSIS

FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED

SUGGESTED FORMAT FOR QUALITY ASSURANCE PLAN (QAP)

TITLE PAGE

TABLE OF CONTENTS

- 1.0 PROGRAM DESCRIPTION
- 2.0 PROGRAM ORGANIZATION AND RESPONSIBILITIES
- 3.0 QA OBJECTIVES FOR MEASUREMENT
- 4.0 SAMPLING PROCEDURES
- 5.0 SAMPLE CUSTODY
- 6.0 CALIBRATION PROCEDURES
- 7.0 ANALYTICAL PROCEDURES
- 8.0 DATA REDUCTION, VALIDATION AND REPORTING
- 9.0 INTERNAL QUALITY CONTROL
- 10.0 PERFORMANCE AND SYSTEMS AUDITS
- 11.0 PREVENTATIVE MAINTENANCE
- 12.0 DATA ASSESSMENT PROCEDURES
- 13.0 CORRECTIVE ACTIONS
- 14.0 QUALITY ASSURANCE REPORTS

FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED

SUGGESTED FORMAT FOR SITE INVESTIGATION (SI) REPORT

EXECUTIVE SUMMARY

- 1.0 INTRODUCTION**
 - 1.1 PURPOSE OF REPORT
 - 1.2 SITE BACKGROUND
 - 1.2.1 SITE DESCRIPTION
 - 1.2.2 SITE HISTORY
 - 1.2.3 PREVIOUS INVESTIGATIONS
 - 1.3 REPORT ORGANIZATION
- 2.0 STUDY AREA INVESTIGATIONS/FIELD STUDIES**
 - 2.1 SURFACE FEATURES/TOPOGRAPHY
 - 2.2 CONTAMINANT SOURCE INVESTIGATIONS
 - 2.3 METEOROLOGICAL INVESTIGATIONS
 - 2.4 SURFACE WATER/SEDIMENT INVESTIGATIONS
 - 2.5 GEOLOGICAL INVESTIGATIONS
 - 2.6 SOIL AND VADOSE ZONE INVESTIGATIONS
 - 2.7 GROUNDWATER INVESTIGATIONS
 - 2.8 ECOLOGICAL INVESTIGATIONS
- 3.0 PHYSICAL CHARACTERISTICS OF THE STUDY AREA**
 - 3.1 SURFACE FEATURES
 - 3.2 METEOROLOGY
 - 3.3 SURFACE WATER HYDROLOGY
 - 3.4 GEOLOGY
 - 3.5 SOILS
 - 3.6 HYDROGEOLOGY
 - 3.7 DEMOGRAPHY AND LAND USE
 - 3.8 ECOLOGY
- 4.0 NATURE AND EXTENT OF CONTAMINATION/IMPACTS**
 - 4.1 CONTAMINANTS OF POTENTIAL CONCERN
 - 4.2 SOURCES
 - 4.3 SOILS AND VADOSE ZONE
 - 4.4 GROUNDWATER
 - 4.5 SURFACE WATER AND SEDIMENTS
 - 4.6 AIR
- 5.0 CONTAMINANT FATE AND TRANSPORT**
 - 5.1 POTENTIAL ROUTES OF MIGRATION/EXPOSURE PATHWAYS
 - 5.2 CONTAMINANT PERSISTENCE/ACCUMULATION
 - 5.3 CONTAMINANT MIGRATION/MODELING

SUGGESTED FORMAT FOR SITE INVESTIGATION (SI) REPORT
(CONTINUED)

6.0 BASELINE RISK ASSESSMENT

6.1 HUMAN HEALTH EVALUATION

6.1.1 EXPOSURE ASSESSMENT

6.1.2 TOXICITY ASSESSMENT

6.1.3 RISK CHARACTERIZATION

6.2 ECOLOGICAL/ENVIRONMENTAL EVALUATION

6.2.1 SPECIES/COMMUNITY/HABITAT CONSIDERATIONS

6.2.2 PROBLEM FORMULATION

6.2.3 EXPOSURE PATHWAYS/TARGET SPECIES

6.2.4 ECOTOXICITY/STRESSOR RESPONSE ASSESSMENT

6.2.5 RISK CHARACTERIZATION

7.0 SUMMARY AND CONCLUSIONS

7.1 SUMMARY

7.1.1 NATURE AND EXTENT OF CONTAMINATION/IMPACTS

7.1.2 FATE AND TRANSPORT

7.1.3 RISK ASSESSMENT/ACTION LEVEL EXCEEDANCES

7.2 CONCLUSIONS

7.2.1 DATA LIMITATIONS AND RECOMMENDATIONS FOR FUTURE WORK

7.2.2 RECOMMENDED REMEDIAL ACTION OBJECTIVES

APPENDICES: ANALYTICAL DATA AND QA/QC RESULTS, RISK ASSESSMENT METHODS

FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED

SUGGESTED FORMAT FOR EE/CA REPORT

EXECUTIVE SUMMARY

1.0 INTRODUCTION

2.0 SITE CHARACTERIZATION

- 2.1 SITE DESCRIPTION AND BACKGROUND
- 2.2 PREVIOUS REMOVAL ACTIONS
- 2.3 SOURCE, NATURE AND EXTENT OF CONTAMINATION
- 2.4 ANALYTICAL DATA
- 2.5 RISK EVALUATION

3.0 IDENTIFICATION OF REMOVAL ACTION OBJECTIVES

- 3.1 DETERMINATION OF REMOVAL SCOPE
- 3.2 DETERMINATION OF REMOVAL SCHEDULE
- 3.3 PLANNED REMEDIAL ACTIVITIES

4.0 IDENTIFICATION AND ANALYSIS OF REMOVAL ACTION ALTERNATIVES

- 4.1 EFFECTIVENESS
- 4.2 IMPLEMENTABILITY
- 4.3 COSTS

5.0 COMPARATIVE ANALYSIS OF REMOVAL ACTION ALTERNATIVES

RECOMMENDED REMOVAL ACTION ALTERNATIVE (TO BE DEVELOPED BY THE AGENCIES TO ACCOMPANY EE/CA DOCUMENT DURING PUBLIC COMMENT PERIOD)

FIGURES, TABLES, AND ATTACHMENTS AS REQUIRED